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RANDY CARVER

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA *EX REL.*
RANDY CARVER,

Plaintiff,

v.

FACTOR NUTRITION LABS, LLC ET AL.,

Defendants.

Case No. 4:10-cv-02529-CW

STIPULATION OF DISMISSAL

Hon. Claudia Wilken

Pursuant to the parties' written settlement agreement, *qui tam* plaintiff Randy Carver ("Plaintiff") and defendant Factor Nutrition Labs, LLC ("Defendant") hereby stipulate as follows:

1. This is an action by Plaintiff claiming false patent marking pursuant to
5 U.S.C. § 292 for FOCUSfactor® ("FOCUSfactor").

2. Plaintiff and Defendant have agreed to settle their claims, including
7 without limitation, claims for false patent marking for FOCUSfactor.

3. Plaintiff consents to dismissal with prejudice of all claims for false
9 patent marking for FOCUSfactor. This dismissal, however, shall be without
10 prejudice to the government should it decide itself to pursue any false marking
11 claims against Defendant.

4. Plaintiff and Defendant shall each bear their own attorneys' fees and
13 costs incurred in connection with this action.

5. This Court retains jurisdiction over the parties and the settlement
15 agreement for purposes of resolving any disputes that may arise under it.

September 20, 2011

PERKINS COIE LLP

18 By: /s/ *Grant Kinsel*
19 Grant Kinsel, Bar No. 172407

20 Attorneys for Defendant
21 **FACTOR NUTRITION LABS, LLC**

September 20, 2011

NEWPORT TRIAL GROUP

24 By: /s/ *Scott Ferrell* (with permission)
25 Scott Ferrell, Bar No. 202091

26 Attorneys for Plaintiff
27 **RANDY CARVER**

PROOF OF SERVICE

I, Pamela Villeral, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1888 Century Park E., Suite 1700, Los Angeles, California 90067-1721. On September 20, 2011, I served a copy of the within document(s):

STIPULATION OF DISMISSAL AND PROPOSED ORDER

- by electronic service in accordance with the CM/ECF System for filing and transmittal of Notice of Electronic Filing to the below listed CM/ECF registrants:

Roger E. Borg
rborg@calljensen.com

Scott J. Ferrell
sferrell@trialnewport.com, lberger@trialnewport.com

- by placing the documents listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below:

David W. Reid
Newport Trial Group
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

1 I declare that I am employed in the office of a member of the bar of this
2 court at whose direction the service was made.

3 I declare under penalty of perjury under the laws of the State of California
4 that the above is true and correct.

5 Executed on September 20, 2011, at Los Angeles, California.
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8 By: /s/ *Pamela Villeral*
9 Pamela Villeral

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
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UNITED STATES OF AMERICA *EX REL.*
RANDY CARVER,

Plaintiff,

v.

FACTOR NUTRITION LABS, LLC ET AL.,

Defendants.

Case No. 4:10-cv-02529-CW

[PROPOSED] ORDER OF DISMISSAL

Hon. Claudia Wilken

In light of the settlement agreement and stipulation of dismissal between *qui tam* plaintiff Randy Carver (“Plaintiff”) and defendant Factor Nutrition Labs, LLC (“Defendant”), the Court hereby ORDERS as follows:

1. Plaintiff's false patent marking claims for FOCUSfactor® (“FOCUSfactor”) are hereby dismissed with prejudice.

2. Plaintiff and Defendant shall each bear their own attorneys' fees and costs incurred in connection with this action.

3. This Court retains jurisdiction over the parties and the settlement agreement for purposes of resolving any disputes that may arise under it.

Dated: 9/21/2011

HON. CLAUDIA WILKEN
U.S. DISTRICT JUDGE